

REMARKS

Applicants wish to thank the Examiner for the attention accorded to the instant application. Applicants have canceled claims 2, 4, 32, 35, 52, 56, 72, 84, 96-99 and 101, and reserve the right to file one or more continuation applications to prosecute these claims. Claims 102-115 have been added. Claim 1 has been amended to include the limitations of claim 2. Claim 47 has been amended to include the limitations of claim 52. Claim 68 includes the limitations of claim 72. Claim 102 includes the limitations of claims 1 and 4. Claim 113 includes the limitations of claims 47 and 56.

With respect to the Examiner's double patenting rejections, Applicants will submit a suitable terminal disclaimer if the herein amendments are acceptable by the Examiner.

With respect to the Examiner's rejections of claims 13, 47, and 50 based on 35 U.S.C. §112, second paragraph, it is respectfully submitted that these rejections are overcome by the amendments herein.

The Examiner's rejections of claims 52 and 56 under 35 U.S.C. §103(a) based on Weber et al US Patent No. 5,686,979 ("Weber") in view of Nilsson US Patent No. 3,833,288 ("Nilsson"), are respectfully traversed. Further, the Examiner's rejection of claims 2-4 and 72 under 35 U.S.C. §103(a) based on Sakata US Patent No. 4,729,640 ("Sakata") in view of Sharp et al. US Patent No. 5,528,393 ("Sharp") is respectfully traversed (although Applicant believes that the Examiner intended to use Weber in combination with Sharp (e.g., see page 16 of the March 4, 2002 Office Action)).

It is a well established principle of US patent law that obviousness cannot be established based on combinations of known elements:

[V]irtually all [inventions] are combinations of old elements. Therefore an Examiner may often find every element of a claimed invention in the prior art. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the Examiner to show a motivation to combine the references that create the case of obviousness. The Board [of Appeals] did not, however, explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination. Instead, the Board merely invoked the high level of skill in the field of the art. If such a rote indication could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields, the Board could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for rejection. To counter this potential weakness in the obviousness construct the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.

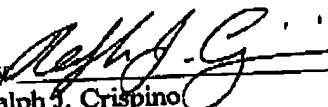
In re Rouffet, 47 USPQ2d 1457, 58 (Fed. Cir., July 15, 1998) (citations omitted, emphasis added).

With respect to the instant application, the Examiner, in the Office Action dated March 4, 2002, has not pointed to any motivational statements in any of the cited art for including a controllable scattering layer in the structure of Weber (rejection of claims 52 and 56), nor any motivational statements to use CLC liquid crystal material (rejection of claims 2-4 and 72). The Examiner has merely relied on the rote statement which Rouffet warns against. For this reason, Applicants respectfully request that the Examiner withdraw his 35 U.S.C. §103(a) rejection.

In light of the claim amendments, the Examiner's rejections based on 35 U.S.C. §102(b) are moot.

The amendments herein do not introduce any new matter. It is believed that the claims herein should be allowable to Applicants. Accordingly, allowance is respectfully requested.

Respectfully submitted,

By 
Ralph J. Crispino
Registration No. 46,144

Date: July 5, 2002
REVEO, INC.
85 Executive Boulevard
Elmsford, New York 10523
Telephone (914) 798-7270
Facsimile: (914) 345-9558

FAX COPY RECEIVED

JUL 5 2002

TECHNOLOGY CENTER 2800